Amendment No. 1 to SB2220

Crowe
Signature of Sponsor

AMEND Senate Bill No. 2220* House Bill No. 2272

by deleting all language after the caption and substituting:

WHEREAS, substance use disorder and drug overdose are major health problems that affect the lives of many people and service systems in this State, leading to profound consequences, including permanent injury and death; and

WHEREAS, overdoses caused by heroin, fentanyl, other opioids, stimulants, controlled substance analogs, novel psychoactive substances, and other legal and illegal drugs are a public health crisis that stresses and strains the financial, public health, healthcare, and public safety resources in this State; and

WHEREAS, overdose fatality reviews, which are designed to uncover the who, what, when, where, why, and how a fatal overdose occurs, allow jurisdictions to examine and understand the circumstances leading to a fatal drug overdose; and

WHEREAS, through a comprehensive and multidisciplinary review, overdose fatality review teams can better understand the individual and population factors and characteristics of potential overdose victims; and

WHEREAS, such review provides a locality with a greater sense of the strategies and multiagency coordination needed to prevent future overdoses and results in the more productive allocation of overdose prevention resources and services within the jurisdiction; now, therefore, BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 2, is amended by adding the following as a new part:

68-2-101. Short title.

This part is known and may be cited as the "Overdose Fatality Review Act."

68-2-102. Purpose.

The purpose of this part is to:

(1) Create a legislative framework for establishing county or regional multidisciplinary overdose fatality review teams in this state;

(2) Provide overdose fatality review teams with duties and responsibilities to examine and understand the circumstances leading up to a fatal overdose so that the teams can make recommendations on policy changes and resource allocation to prevent future overdoses; and

(3) Allow overdose fatality review teams to obtain and review records and other documentation related to a fatal overdose from relevant agencies, entities, and individuals while remaining compliant with local, state, and federal confidentiality laws and rules.

68-2-103. Part definitions.

As used in this part:

(1) "Drug":

(A) Means a substance that produces a physiological effect when ingested or otherwise introduced into the body; and

(B) Includes an illicit or legal substance;

(2) "Healthcare provider" means a physician, advanced practice registered nurse, physician assistant, psychiatrist, psychologist, clinical social worker, professional clinical counselor, or marriage and family therapist who is licensed to practice in this state;

(3) "Local team":

(A) Means the multidisciplinary and multiagency drug overdose fatality review team established for a county, a group of counties, or a tribe; and

(B) Includes a multicounty team;

(4) "Multicounty team" means a multidisciplinary and multiagency drug overdose fatality review team jointly created by two (2) or more counties in this state;

(5) "Overdose" means a fatal or nonfatal injury to the body that happens when one (1) or more substances is taken in excessive amounts;

(6) "Overdose fatality review" means a process in which a multidisciplinary team performs a series of individual overdose fatality reviews to effectively identify system gaps and innovative community-specific overdose prevention and intervention strategies;

(7) "Personal representative" means:

(A)

(i) A minor's parent or legal guardian;

(ii) An executor of a decedent's estate; or

(iii) An administrator of a decedent's estate; or

(B) If an individual described in subdivision (7)(A) is not available, then:

(i) A spouse; or

(ii) If a spouse is not available, then a member of the patient's or decedent's family with legal authority to act on behalf of the patient or decedent;

(8) "Substance use disorder" means a pattern of use of alcohol or other drugs leading to clinical or functional impairment, in accordance with the Diagnostic and Statistical Manual of Disorders (DSM-5) of the American Psychiatric Association, including a subsequent version of the manual; and

(9) "Substance use disorder treatment provider" means:

(A) An individual or entity who is licensed, registered, certified, or permitted within this state to treat substance use disorders; or

(B) An individual who has a federal waiver under the Drug Addiction Treatment Act of 2000 (DATA 2000) (21 U.S.C. 801 et seq.) from the federal Substance Abuse and Mental Health Services Administration (SAMHSA) to treat individuals with substance use disorder using medications approved for that indication by the United States food and drug administration.

68-2-104. Establishment of overdose fatality review teams.

(a) A county may establish a multidisciplinary and multiagency overdose fatality review local team in accordance with this part.

(b) Two (2) or more counties may agree to jointly establish a single multicounty team. Counties that participate in a multicounty team shall execute a memorandum of understanding between the counties regarding team membership, staffing, and operations.

68-2-105. Composition of overdose fatality review teams.

(a)

(1) Local teams consist of the following individuals, organizations, agencies, and areas of expertise, if available:

(A) The county health officer, or the officer's designee;

(B) The director of the local department of human or social services, or the director's designee;

(C) The district attorney, or the district attorney's designee;

(D) One (1) or more director of a behavioral health services provider in the area served by the team, or the director's designee;

(E) A local law enforcement officer;

(F) A representative of a local jail, detention center, or criminal court;

(G) A medical examiner who provides services in the area served by the team, or the medical examiner's designee;

(H) A healthcare provider who specializes in the prevention, diagnosis, and treatment of substance use disorders;

(I) An emergency medical services provider or firefighter; and

(J) The local director of the department of children services, or the director's designee.

(2) Local teams may include the following individuals, organizations, agencies, and areas of expertise, if available, as either permanent or auxiliary team members:

(A) A local superintendent of schools, or a superintendent's designee;

(B) A representative of a local hospital;

(C) A healthcare provider who specializes in emergency medicine;

(D) A healthcare provider who specializes in pain management;

(E) A pharmacist with a background in prescription drug misuse and diversion;

(F) A substance use disorder treatment provider from a licensed substance use disorder treatment program;

(G) A poison control center representative;

(H) A licensed mental healthcare provider who is a generalist;

(I) A prescription drug monitoring program administrator;

(J) A representative from a harm reduction provider;

(K) A recovery coach, peer support worker, or other representative of the recovery community;

(L) A representative from the local or regional recovery court; and

(M) Other individuals necessary for the work of the local team, as recommended by the local team and appointed by the chair.

(b)

(1) The chair of the local team must be a local or regional county health officer, or a designee of that local or regional county health officer, within the organization that houses the local team.

(2) If a local team is a multicounty team, then the members may vote on which local or regional county health officer, or officer's designee, serves as chair. A local or regional county health officer, or officer's designee, may also serve as co-chairs.

(c) The chair of the local team is responsible for the following:

(1) Soliciting and recruiting the necessary and appropriate members to serve on the local team pursuant to subsection (a);

(2) Facilitating each local team meeting and implementing the protocols and procedures of the local team;

(3) Ensuring that all members of the local team and all guest observers sign confidentiality forms as required under § 68-2-108;

(4) Requesting and collecting the information needed for the local team's case review;

(5) Filling vacancies on the local team when a member is no longer able to fulfill the member's duties and obligations to the local team. The chair shall fill a vacancy with an individual from the same or equivalent position or discipline; and

(6) Serving as a liaison for the local team when necessary.

(d) Members of the local team shall serve without compensation, but may be entitled to reimbursement for travel expenses incurred in the performance of their official duties in conformity with comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

68-2-106. Duties and responsibilities of overdose fatality review teams.

(a) The purpose of each local team is to:

(1) Promote cooperation and coordination among agencies involved in the investigation of drug overdose fatalities;

(2) Develop an understanding of the causes and incidence of drug overdose fatalities in the jurisdiction where the local team operates;

(3) Plan for and recommend changes within the agencies represented on the local team to prevent drug overdose fatalities; and

(4) Advise local, regional, and state policymakers about potential changes to law, policy, funding, or practice to prevent drug overdoses.

(b) To achieve its purpose, each local team shall:

(1) Establish and implement protocols and procedures;

(2) Conduct a multidisciplinary review of information received pursuant to § 68-2-107 regarding a decedent, which must include, but is not limited to:

(A) Consideration of the decedent's points of contact with healthcare systems, social services, educational institutions, child and family services, the criminal justice system, including law enforcement, and other systems with which the decedent had contact prior to death; and

(B) Identification of the specific factors and social determinants of health that put the decedent at risk for an overdose;

(3) Recommend prevention and intervention strategies to improve coordination of services among member agencies to reduce overdose deaths; and

(4) Collect, analyze, interpret, and maintain local data on overdose deaths.

(c) Meetings of the local team may be conducted in person or virtually using a secure web-based audio-visual meetings platform.

(d) In addition to the duties specified in subsection (b), a local team may investigate non-fatal overdose cases that occur within the local team's jurisdiction.

(e) Each local team shall submit an annual de-identified report containing the information in subsection (g) to:

(1) The county health department for the local jurisdiction or jurisdictions served by the local team; and

(2) The department of health.

(f) The department of health shall combine each annual report submitted pursuant to subsection (e) to create a single statewide report containing an aggregate of the data submitted and shall submit that report to the governor, the health committee of the house of representatives, and the health and welfare committee of the senate.

(g) The annual report described in subsection (e) must include, but is not limited to, the following:

(1) The total number of fatal overdoses that occurred within the jurisdiction of the local team;

(2) The number of fatal overdose cases investigated by the local team;

(3) Recommendations for state and local agencies or the general assembly to assist in preventing fatal and non-fatal overdoses in this state; and

(4) Assessable results of any recommendations made by the local team, including, but not limited to, changes in local or state law, policy, or funding made as a result of the local team's recommendations.

(h) Reports submitted pursuant to this section with de-identified data are not confidential and may be shared with the public.

(i) Members of a local team and other individuals in attendance at a local team meeting, including, but not limited to, experts, healthcare professionals, or other participants:

(1) Shall sign a confidentiality agreement as provided for in § 68-2-108;

(2) May discuss confidential matters and share confidential information during the local team meeting without violating state privacy laws; however, confidential information disclosed during a local team meeting must not be further disclosed outside of the meeting;

(3) Are bound by all applicable state and federal laws concerning the confidentiality of matters reviewed by the local team; and

(4) Are not subject to civil or criminal liability or professional disciplinary action for the sharing or discussion of a confidential matter with the local team during a local team meeting. The immunity described in this subdivision (i)(4) does not apply to a local team member or attendee who negligently discloses confidential information or who knowingly and willfully discloses the information in violation of this act or state or federal law.

68-2-107. Access to information.

(a) Notwithstanding another law, and except as provided in subsection (d), on written request of the chair of a local team, and as necessary to carry out the purpose and duties of the local team, the local team must be provided with the following information:

(1) Information and records regarding the physical health, mental health, and treatment for substance use disorder, maintained by a healthcare provider, substance use disorder treatment provider, hospital, or health system for an individual whose death or near death is being reviewed by the local team; and

(2) Information and records maintained by a state or local government agency or entity, including, but not limited to, death investigative information, medical examiner investigative information, law enforcement investigative information, emergency medical services reports, fire department records, prosecutorial records, parole and probation information and records, court records, school records, and information and records of a social services agency, including the department of children's services, if the agency or entity provided services to:

(A) An individual whose death or near death is being reviewed by the local team; or

(B) The family of the decedent being investigated.

(b) The following persons, agencies, or entities shall comply with a records request by a local team made pursuant to subsection (a):

(1) A medical examiner;

(2) A fire department;

(3) A health system;

(4) A hospital;

(5) A law enforcement agency;

(6) Local or state governmental agencies, including, but not limited to, the department of children's services, department of health, department of mental health and substance abuse services, a district attorney, a public defender, the department of correction, and the board of probation and parole;

(7) A mental health services provider;

(8) A healthcare provider;

(9) A substance use disorder treatment provider;

(10) A local education agency or a school, including an elementary school, secondary school, or institution of higher education;

(11) An emergency medical services provider;

(12) A social services provider;

(13) A prescription drug monitoring program; and

(14) Another person or entity who is in possession of records pertinent to the local team's investigation of an overdose fatality.

(c) A person or entity subject to a records request by a local team under subsection (b) may charge the local team a reasonable fee for the service of duplicating the records requested by the local team.

(d) The disclosure or redisclosure of a medical record developed in connection with the provision of substance use disorder treatment services, without the authorization of a person in interest, is subject to limitations that exist under the law of this state, 42 U.S.C. § 290dd-2, or 42 C.F.R. Part 2.

(e) Information requested by the chair of a local team must be provided within ten (10) business days of receipt of the written request and any required written consent, excluding weekends and holidays, unless an extension is granted by the chair. Written requests may include a request submitted via email or facsimile transmission.

(f) Notwithstanding another law, a local team does not need an administrative subpoena or other form of legal compulsion to receive the requested records. This subsection (f), however, does not negate any right the local team has to obtain an administrative subpoena or other form of legal compulsion.

(g) The chair of a local team, or the chair's designee, must request the individual whose overdose is under review or, if deceased, the individual's personal representative, to provide written consent for the release of confidential information.

(h) So long as each individual present at a local team meeting has signed the confidentiality form provided for in § 68-2-108, information received by the chair in response to a request under this section may be shared at a local team meeting with local team members and non-member attendees.

(i) An individual, entity, or local or state agency that in good faith provides information or records to the local team is not subject to civil or criminal liability or professional disciplinary action as a result of providing the information or record.

(j) A member of a local team may contact, interview, or obtain information by request from a consenting family member or friend of an individual whose death is being reviewed by the local team.

68-2-108. Confidentiality.

(a) Local team meetings in which confidential information is discussed are closed to the public.

(b) All local team members and non-member individuals in attendance at a meeting shall sign a confidentiality form and review the purpose and goal of the local team before they may participate in the review. The form must set out the requirements for maintaining the confidentiality of information disclosed during the meeting and penalties associated with failure to maintain that confidentiality.

(c) All information and records acquired by a local team are confidential and are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal proceeding or disciplinary action. Information and records that are otherwise available from other sources are not immune from subpoena, discovery, or introduction into evidence through those sources solely because the information or record was presented to or reviewed by a local team.

(d) Information and records acquired or created by a local team are not subject to state public inspection or open records laws, except as indicated in § 68-2-106 regarding de-identified annual reporting.

(e) Substance use disorder treatment records requested or provided to the local team are subject to additional limitations on redisclosure of a medical record developed in connection with the provisions of substance use disorder treatment services under state or federal law, including, but not limited to, 42 U.S.C.
§ 290dd-2 and 42 C.F.R. Part 2.

(f) Local team members and individuals who present or provide information to a local team shall not be questioned in a civil or criminal proceeding or disciplinary action regarding the information presented or provided. This subsection (f) does not prevent a person from testifying regarding information obtained independently of the local team or as to public information.

(g) The confidentiality of information provided to the local team must be maintained as required by state and federal law. A person damaged by the negligent or knowing and willful disclosure of the confidential information by the local team or its members may maintain an action for damages, costs, and attorney fees.

(h) A person who violates the confidentiality provisions of this part is guilty of a Class B misdemeanor and is subject to a fine not to exceed five hundred dollars ($500) or imprisonment for a term not to exceed six (6) months, or both.

(i) This section does not prohibit a local team from requesting the attendance at a team meeting of a person who has information relevant to the team's exercise of its purpose and duties.

SECTION 2. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are severable.

SECTION 3. The department of health is authorized to promulgate rules to effectuate the purposes of this act. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. The headings in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 5. This act takes effect upon becoming a law, the public welfare requiring it.